

Proposed Settlement Between State Attorney General and Tobacco Companies
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By Rep. Henry Waxman

I am pleased that the tobacco industry, state attorneys general, and plaintiffs' counsel have finally reached an agreement on a tobacco settlement. There is no greater threat to public health than tobacco products. Now we in Congress can begin our work to insure that we pass tobacco-control legislation that truly protects the public health.

The first step must be thorough scrutiny of the package being put forward today. Nothing should be rammed through Congress. We need to hear the views of the Advisory Committee on Tobacco Policy and Public Health chaired by Dr. Kessler and Dr. Koop. And we need extensive public hearings in Congress.

When dealing with the tobacco industry, it is important to remember three facts. First, tobacco companies are selling a lethal and addictive drug.

Second, the products sold by the tobacco companies -- cigarettes -- are the only consumer product in America that kills when used as directed.

And third, the tobacco companies have lied to and deceived the public for 40 years. These companies have operated for decades in utter disregard of the hundreds of thousands of Americans they kill each year.

When evaluating a deal like that being proposed today, it is essential to ask what does the tobacco industry get and what does the American public get. Any final legislation must advance the public health interests of the nation. Any relief the tobacco industry receives must be matched by even greater protection for the public health.

The tobacco industry is getting legal protections that were unthinkable even six months ago. The industry's greatest fear is that litigation losses could expose the companies to unlimited liability. The deal eliminates this threat -- and instead gives the industry a guarantee of future profitability.

The industry's second greatest fear is FDA regulation of nicotine. Just two months ago, a federal court in North Carolina gave FDA unlimited authority to regulate the nicotine content of cigarettes. Today's deal effectively removes this threat. FDA appears to be barred from regulating nicotine until well into the next century -- and even then must overcome nearly insurmountable legal hurdles before regulating nicotine content.

The industry's third priority is to avoid limitations on exports, because the industry knows that exploitation of foreign countries -- especially under-developed nations -- is where its future growth lies. And today's deal also meets this industry objective.

So it appears that from the tobacco industry's perspective, the deal announced today is terrific. It gives the industry what they most want -- a permanent license to profit from selling a lethal and addictive drug.

In evaluating this deal, the key question for me will be whether the American public is getting equal certainty. The tobacco industry has a guarantee of future profitability. Do we have an equivalent guarantee that the industry will stop selling its products to our children?

It is indisputable that Mike Moore and the other state AGs negotiating this deal have won significant concessions from the tobacco industry. The industry will be subject to a long list of new requirements on advertising and youth access. For this accomplishment, I congratulate Attorney General Moore.

But will these new regulatory restrictions guarantee that the tobacco industry will stop addicting our children? We will have gained very little if after the agreement is finalized, the industry remains free to circumvent the new regulations by exploiting the inevitable loopholes.

To get public health certainty, we need strong performance standards -- backed up with substantial penalties -- that insure that tobacco companies stop targeting our kids. I have serious reservations whether the provisions in the deal include this essential safeguard. They seem to fall far short of the requirements of the NO Tobacco for Kids Act that I introduced with Senators Durbin and Lautenberg.

In fact, as I understand it, the maximum penalty for violating the so-called "look back" provision in the agreement is a pittance --

just six cents a pack.

We also must be certain that FDA's powers to regulate tobacco products -- including nicotine -- aren't curtailed. It makes absolutely no sense to make concessions to the tobacco industry on nicotine regulation after we've already won this issue in court. Curtailing FDA's authority to regulate tobacco isn't an advance -- it's a retreat.

There are many other important questions. Is the compensation being paid by the tobacco industry sufficient? Is there full disclosures? Are we including appropriate export restrictions? Are we insuring that tobacco executives aren't unjustly enriched as the value of their stock options soar?

I understand that lawyers for the tobacco industry at Verner Liipfert are drafting the details of the agreement announced today. I am glad that we will soon have these details to examine. They need to be scrutinized so that we in Congress can begin our consideration of tobacco legislation.

In summary, I welcome today's development. I hope it will be the beginning of an intensive and public examination of tobacco legislation in Congress.

